



INFORMAL COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS IN FOLLOW-UP TO THE JUNE 22, 2018 *EN BANC* MEETING

July 13, 2018

I. COMMENTS

Members of the Alliance for Retail Energy Markets¹ (“AReM”) were pleased to participate in the June 22, 2018 *en banc* meeting attended by all Commissioners of the California Public Utilities Commission (“Commission”), plus three Commissioners from the California Energy Commission. It provided a forum for further discussion of retail choice and the competitive market constructs that are needed to support retail choice while ensuring a reliable grid and continued achievement of environmental improvement.

What was noteworthy to AReM during the *en banc* is the Commissioners’ and other parties’ lack of confidence in competitive markets to provide affordable, reliable, and clean power. Therefore, AReM’s post *en banc* comments first and foremost seek to encourage the Commission to recognize that meeting reliability and environmental goals as retail choice expands will require market reforms that embrace the disaggregation of supply procurement that retail choice represents and that facilitate competitive markets. Continued focus on command and control of utility procurement to ensure affordability, reliability and decarbonization, and allowing that procurement to be on behalf of load that has elected competitive supply will be inefficient and create barriers to the California market of the future.

In short, the focus should not be “Are we going to move to increasing levels of retail choice?” but “How can we best get there?” No doubt it is a paradigm shift, but without a more positive underpinning to the effort at hand, the transition will be fraught with unnecessary tension and delay. It is time to put the specter of the energy crisis behind us – to recognize that the flaws that led to the energy crisis have been addressed and California can now confidently

¹ AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

complete the process of restructuring its energy market to fully support, rather than impede, retail choice.

In the next section, AReM reiterates the path forward that it set forth in its June 11th comments on the Green Book, which are summarized in the next section.

II. SUMMARY OF AREM’S “PATH FORWARD” RECOMMENDATIONS

AReM’s recommendations for market reforms necessary to support growing retail choice while maintaining reliability and increasing emissions reductions, as outlined in its June 11th Green Book Comments were:

- 1. Projecting a potential return to the energy crisis from expanded retail choice ignores the realities of the market flaws that contributed to the original energy crisis and what steps have already been implemented to fix those flaws – and as such are alarmist and counterproductive.** Investigation of the root cause of the energy crisis has clearly revealed that the basic market structure that required the utilities to purchase only spot-priced energy while serving their load at fixed rates was flawed. That is not a mistake that was replicated in any other region that implemented retail choice and is not a market structure that should (or would) be implemented in the future in California, should the utilities retain provider of last resort obligations. Moreover, the energy crisis is used as a reason to avoid any market changes that create the potential for FERC jurisdiction over elements of resource adequacy market constructs, when there is little reason to believe that FERC jurisdiction over a CAISO-administered market would usurp Commission authority to achieve state policy goals. So, as Commissioner Picker noted during the *en banc*, there is indeed “scar tissue” that remains from the dark days of the energy crisis, but there are no fresh wounds. The lessons have been learned, the corrections have been made, and the extensive benefits that have accrued to customers in jurisdictions that have retail choice are well documented. Both CCAs and expanded DA has been operational in California since 2010 without problems like those seen in the energy crisis. While close and robust market monitoring will always be necessary and prudent, the time for letting energy crisis doomsday scenarios to impose a “hard stop”

on further discussion of how to resume the path to retail choice is long past – and it is time to look forward, rather than backward.

2. **Markets can and will work to support resource investments if they are not undermined by policies that authorize rate-regulated investments that devalue competitive investments.** In Decision 06-07-029, the Commission recognized that (i) competitive investment does not peacefully coexist with a regulatory paradigm that allows/requires the utilities to enter into long-term resource contracts that are funded directly by ratepayers and (ii) such out-of-market forays must be extremely limited if competitive markets are to work properly. Put another way, competitive neutrality between ratepayer-funded investment and competitive investment is not achievable. Despite this recognition, the Commission has consistently and repeatedly ordered the utilities to make investments on behalf of all load, creating a situation where retail customers must pay to reimburse the utilities for their investments and then pay the retail supplier they have chosen to serve them, and where investment by competitive entities is made too risky because of the regulatory uncertainty that exists. Competitive entities like ESPs and other market intermediaries will make appropriate resource investments if the appropriate signals are given; but markets don't work if regulators don't let them. The time has come to let them work and to do so by implementing the type of market structures that support retail choice, rather than institutionalizing further utility dominance in resource investment.
3. **There are several market structure modifications that should be implemented to support retail choice while maintaining reliability and continued environmental improvement.** Those are:
 - a. *Utility divestment of supply-side resources and recovery by the utilities of the stranded costs that result, if any.* No existing retail choice market has retained a vertically-integrated utility model, nor are there any examples of utilities being disallowed from recovering their rate-regulated investment costs. Full divestment allows the stranded-cost recovery to be complete and provides certainty about when the collection of such costs will end.
 - b. *Development of Provider of Last Resort (POLR) Service for customers who cannot or choose not to elect competitively-provided service.* POLR may or

may not be a role for the utilities – both models have worked well in other jurisdictions to ensure that all customers have access to market-based, competitively-priced service, and provided the utility (if the utility is the POLR provider) has no competitive advantage in retaining customers.

- c. ***Implementation of a centralized capacity clearing market.*** This is the most efficient way to provide the needed capacity in California to (i) ensure adequate compensation for supply-side resources whose energy bids are capped, (ii) provide transparent price signals that provide the incentives for maintaining existing resource and new resource development, and (iii) provide a forum for buyers and sellers of capacity to easily transact as load migrates among suppliers. Concerns about FERC jurisdiction over the market preventing the ability of California to meet environmental goals is misguided; California will continue to be able to maintain the GHG and renewables goals that it has developed.
- d. ***Backstop procurement mechanisms to address deficiencies or emergencies.*** These backstop mechanisms must be unambiguous in terms of when and how they will be applied.

As AReM noted in its Green Book comments, some issues related to utility divestment and POLR issues are already under consideration in Rulemaking 17-06-026 that is expected to lead to some reforms in the Power Charge Indifference Adjustment (PCIA). AReM considers it likely that an additional proceeding will be necessary to deal more explicitly with unwinding utility ownership and contractual control of its supply resources. Capacity market issues are under discussion currently in Rulemaking 17-09-020, and AReM is hopeful that good progress will be made there in terms of developing a robust capacity market structure or other approaches that provide a flexible, liquid market construct to provide the appropriate price signals to incent needed resource capacity.

AReM looks forward to continued participation in these proceedings.